IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5416 of 2000
And
SPECIAL CIVIL APPLICATION No.5491 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SUKHALAL @ MAHENDRA BAVABHAI HUMBAL
Versus
STATE OF GUJARAT, THROUGH SECRETARY

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Appearance:
MR HR PRAJAPATI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/09/2000

COMMON ORAL JUDGEMENT

#. Heard the learned counsel Mr.H.R.Prajapati for the

petitioners of both the petitions and the learned AGP Mr.Jani. Ms.Davawala representing the Union of India is also present.

#. Both the petitioners have challenged the orders of detention passed by the learned District Magistrate, Junagadh under the powers conferred by sub-section 2 of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 and have submitted that orders under challenge dated 13.5.2000 are illegal, bad and in violation of Article 22(5) of the Constitution of India and the same should be quashed and set aside.

#. Learned counsel appearing for the parties have jointly submitted that, both these petitions are mostly similar and the grounds of detention mentioned by the District Magistrate and the grounds for challenging the very orders agitated by the petitioners in both the petitions being similar, both these petitions can be heard simultaneously and disposed of by this common order. Therefore, this common order is passed.

#. The petitioners have challenged the orders of detention on various grounds, but the learned counsel appearing for the petitioners Mr.Prajapati has constructed his arguments mainly on two grounds, that is, delay in dealing with the representation filed by the detenu by the concerned authority. So far as Special Civil Application No.5416 of 2000 is concerned, the petitioner has allegedly stored the stock of wheat which was to be distributed to the card holders living below the poverty line and the quantity of wheat found by the officer of the State Government was about 10000 kg. According to the detaining authority the petitioner was involved in the activities of black marketing which can adversely affect the supply of essential commodities and the petitioner was found acting in the manner prejudicial to the supply of wheat. The order of detention dated 13.5.2000 was served with all the grounds on that very day to the petitioner and in response to the order of detention and the grounds conveyed to the petitioner, representation was made to the detaining authority on 25.5.2000, that is, within first 12 days from the date of the order. The detaining authority received the representation on 29.5.2000. The detaining authority forwarded the representation to the State Government on 1.6.2000.

#. Mr.Prajapati has argued that the delay caused in forwarding the representation has not been explained by

the District Magistrate, and therefore, on this ground only the order of detention should be quashed and set aside and the petitioner should not be kept in continuous detention. The representation was received by the State Government on 5.6.2000 and the same was forwarded to the Central Government on that very day. According to Mr.Prajapati the affidavit of the District Magistrate does not clarify that what had happened with the office on 29.5.2000, 30.5.2000 and 31.5.2000 and under which compelling circumstances, despatch of the representation to the State Government was delayed upto 1.6.2000. Mr.Prajapati has submitted that, apparently a delay of a day or two if explained may not help the petitioner, but in case of unexplained delay, delay of a day should be viewed seriously. In view of the query raised by the court, Mr.Prajapati has drawn the attention of this court to the judgment delivered in Special Civil Application No.9664/99 dated 16.3.2000 by this Court (Coram: A.L.Dave,J.) wherein the learned Judge has held that, delay of one day can be fatal and the same was treated fatal as the same was not explained.

#. The affidavit of the District Magistrate in the case of the petitioner of Special Civil Application No.5491/2000 is filed yesterday. When this matter was taken up for hearing, the learned AGP Mr.Jani has requested this court to grant him sometime so that he can ascertain as to whether the detaining authority was available in the headquarter during these days, that is, 29.5.2000, 30.5.2000 and 31.5.2000. I must appreciate the statement of Mr.Jani, learned AGP that he has fairly submitted today that the learned District Magistrate was in the headquarter on all these three days. The verdict of this court in Special Civil Application No.9664/1999 is based on the verdict of the Apex Court in the case of Navalshankar Ishwarlal Dave Vs. State of Gujarat, reported in AIR 1994 SC 1496 and I am told that there are catena of decisions wherein the Apex Court has observed that delay of even more than 15 or 20 days also can be ignored if the same is appropriately explained, but in the case of unexplained delay the order of detention shall have to be struck down and so I am in full agreement to the above referred judgment in Special Civil Application No.9664/1999.

#. In view of the special facts and circumstances of the case, I would like to refer the relevant para 6 of the above referred judgment for the sake of brevity and convenience.:

"Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation".

#. In view of the abovestated facts, Special Civil Application No.5416/2000 shall have to be allowed and therefore, the same is allowed.

#. So far as Special Civil Application No.5491/2000 is concerned, the order of detention was communicated to the petitioner on 13.5.2000 and the representation was made to the detaining authority on 25.5.2000 and the same was received by the detaining authority on 29.5.2000. In this case, the detaining authority forwarded the representation to the State Government on 1.6.2000. So in line of the above observations made while dealing with Special Civil Application No.5416/2000 I am incline to accept the case of this petitioner also by holding that the delay caused by the detaining authority in forwarding the representation to the State Government should be treated fatal and on this ground only the order of detention can be quashed and set aside.

##. Mr.Prajapati has further submitted that, so far as the petitioner - Subhasbhai Bavabhai Humbal is concerned, the Central Government has not responded to the representation forwarded by the State Government for revocation of the order of detention. Mr.Prajapati has placed reliance on the case reported in (1998)4 SCC, 260,

but in light of the affidavit filed by Mr.R.C.Dhankar, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi dated 27.6.2000 Mr.Prajapati has not pressed for this ground. So, on the above ground, both these petitions shall have to be allowed.

##. Ms.Davawala, learned counsel appearing for the Union of India has tendered on record the counter affidavit and she has nothing to add as the grievances raised by the petitioners in these petitions are mainly against the State of Gujarat and the Detaining Authority.

##. In nutshell, the petitioners can succeed and I am incline to allow these petitions on the very ground without going into the merits of other grounds pleaded by the petitioners. The petitions shall have to be allowed, therefore, the same are allowed. Impugned orders of detention dated 13.5.2000 passed by the Detaining Authority are quashed and set aside. The petitioners should be set forth at liberty forthwith if they are not required otherwise.

(C.K.Buch,J)
(pathan)